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January 10, 2002

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Suite 1200  
Antitrust Division, Department of Justice  
601 D Street NW, Washington, DC 20530

Dear Sir or Madam:

I am writing to express my opinion on the proposed Final Judgement in the Microsoft anti-trust case in response to the invitation of public comment on the proposal. I would preface my comment on the proposed judgement by stating that I am not in any way affiliated, other than by usage of their products, with any of the companies mentioned herein. I am also not a lawyer, but I have done my best to comprehend the sometimes confusing Final Judgement.

This out of the way, I will be straight and to the point: I find the proposed judgement to be woefully inadequate, at best. At worst, it leaves the door even more open for the practices that this proposal was intended to prevent and peralize. This phase in the legal process is referred to as the penalty phase for a reason- it generally involves some sort of penalty to the convicted parties. However, the proposed judgement seems to me like even less than the proverbial "slap on the wrist" and closer to a slight scowl in their direction. I feel that much more needs to be done to discourage Microsoft from using its current monopoly position to impede the competition and innovation that is what makes a capitalist market system function so well.

I will first address problems that I see in the current Judgement, and will then address major additions that I believe should be made. In Section III.H.2 (the second 2., this section should have been better numbered for referral...) I believe that this exception to the requirement allowing non-Microsoft Middleware Products has entirely too much potential to be abused. If the non-Microsoft Middleware Product does not supply a "functionality consistent with a Windows Operating System Product" but the user still wishes to use it, that should be their choice. If the functionality of the Microsoft Middleware Product is that much better, the end user can choose to use the Microsoft Product instead of the non-Microsoft Product based on its functionality- not a functionality requirement decided upon by Microsoft.

In section 4.B, the Appointment of a Technical Committee (TC) I have several objections both in content and in general. First, in section 4.B.2.a, I believe that not being employed by Microsoft in the past year is far too short of a timeframe to limit this to. I believe that there should be limitation of not being employed in any capacity by Microsoft for at least the last 5 years should be a requirement. Also, in section 4.B.3 I firmly believe that Microsoft should not be allowed to select a member to sit on the Technical Committee. This, to me, falls under the description of 'letting the wolf guard the hen-house.'. Barring the total exclusion of Microsoft selecting a TC member, I believe the section 4.B.5 should be changed to read as follows:

"If the United States determines that a member of the TC has failed to act diligently and consistently with the purposes of this Final Judgement, the Plaintiff shall select a replacement member in the same manner as provided for in Section IV.B.3. If a member of the TC resigns, or for any other reason ceases to serve in his or her capacity as a member of the TC, the person or persons that originally selected the TC member shall select a replacement member in the same manner as provided for in Section IV.B.3"

Thus, if the TC member appointed by Microsoft to the TC is found to not be acting diligently or in a manner consistent with this Judgement, Microsoft will lose their right to appoint a member to the Committee. Also, I believe that Section 4.B.10 should be changed to allow public statements by members of the TC that have been approved by the Plaintiff(s).

In Section IV.C.1, there should be a stipulation made to allow the Plaintiff(s) to review and possibly reject an proposed appointment to the position of Compliance Officer. The Compliance Officer should also be held accountable by the TC for carrying out the duties outlined.

Section IV.C.4.d should be stricken completely from the Judgement, assuming I am understanding it right. Of what use is having the TC if they are effectively gagged? If the TC members cannot testify of what they have found, why are they even there? This to me is almost worse than not having a group in place

to monitor Microsoft at all- having a group in place that seems to be capable of monitoring and reporting on infractions of the law, but that is forbidden from doing so. This also seems to be in direct conflict with several of the duties of the TC. The TC members are to notify the Plaintiffs of any failure to comply with the Judgement. But, from the way Section IV.C.4.d reads these reports, even the actual evidence that the TC found, would not be admissible in further prosecution. Furthermore, if other evidence of legal infractions were found by the TC, they would not be able to testify about it as well. This section just makes no sense at all- and moreover seems to almost completely remove any of the usefulness of the TC.

Finally, in Section V.3, I believe that there should not be a limit of a one-time extension of the (hopefully modified and strengthened) Final Judgement. If Microsoft were to continue to violate the Judgement even after the maximum 7 years allotted were up, they should not be allowed to get off scott free to continue leveraging their monopoly and force even more of the taxpayer's money to be spent getting them to stop their illegal practices. As long as it can be legally and satisfactorily demonstrated that they continue to violate the terms of the Judgement, the penalties should be indefinitely renewable.

In addition to what is currently laid out in the Final Judgement, I believe that at least the following additions should be made. First, a more effective way of ensuring that competing Operating Systems and software products are more accessible to the end user by making it easier to either obtain a computer from a vendor without an operating system or with a non-Microsoft OS. The Judgement takes a first few small steps towards this by forbidding vendors and Microsoft from entering into exclusive or fixed percentage distribution, promotion or use of the Windows Operating System. However, this just doesn't go far enough- the OS and other proprietary software should be an option that can be added in for a price over the base hardware, not automatically assumed to be what the consumer desires. This way buyers will be more free to choose their operating system, and they won't automatically pay for the Windows Operating System as is the case now with almost all new PC computers. This is not to say that the hardware vendors cannot offer a discount on the Operating System over buying it without buying a computer- as stipulated in the Judgement, there is nothing wrong with Microsoft giving volume discounts on its product like almost any other business.

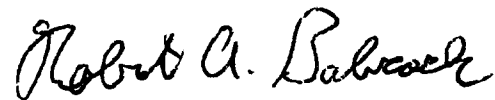
Next, Microsoft should be prevented from attempting to move the internet towards its own proprietary vision by ensuring that none of its services or products exclude interoperability with services or products not provided or produced by Microsoft. Specifically, attempts by Microsoft to limit access to supposedly free content and services to its own products, as in the recorded case of the MSN site blocking access to users attempting to access it using a non-Microsoft browser. Communications protocols used by Microsoft's products should, while still maintaining necessary security, be published and reviewed to allow other products to interact properly with them and to ensure that Microsoft is not attempting to use these protocols to further leverage its monopoly.

Similarly, the file formats used by Microsoft's products should be released to the public prior to their implementation in released software. Whether by leveraging their monopoly or not, Microsoft's office productivity products have become the standard which most organizations operate under. Microsoft has an observed habit of making changes to these formats which often cripple the ability of competing and occasionally even complementary software to access these files. Requiring release of the details of these formats would allow more level competition. Truth be told, I would also like to see Microsoft be required to produce versions of its productivity applications for competing Operating Systems, but I must concede that I do not have any suggestion as how this could be done both fairly and to ensure Microsoft does not intentionally sabotage the quality of these 'ports'.

Finally, I believe that as an additional penalty I believe that Microsoft should be fined a non-trivial amount in addition to any court costs of these proceedings, and that this fund should be used to create a fund for software developers to develop applications specifically for non-Microsoft Operating Systems. As Microsoft has done much to keep software companies from developing software for competing Operating Systems to further their monopoly, I believe that this would be both an appropriate and poetic penalty.

I have also heard several reports of repeated mention of leniency in penalties against Microsoft being 'for the good of the country', and I submit that this is exactly counter to the truth. Actions such as those that Microsoft has taken- achieving and maintaining a monopoly through illegal practices instead of by competing and producing superior products and services- are completely counter to the principles of this country, not just its laws, and can only end up being harmful to this country. This country has a history of great innovation and creativity, which has been fostered by the open, competitive nature of its economy. By leveraging its monopoly as it has, Microsoft has tried to put itself above the need for innovation and creativity and hence prevented the innovation and creativity that its competing might have produced. Were all fields of business leveraged and dominated by monopolies such as Microsoft, there would be little, if

any, innovation, and we would quickly find ourselves left behind as the rest of the world continued innovating and creating. I will not deny that Microsoft is likely an important part of our economy- but how much -better- a part of it would it be if it actually had competition that forced it to compete? From DR-DOS and OS/2 (to name the ones that come to mind) and Apple, Sun, and Linux in the present and into the future, Microsoft has sought to eliminate its competition, not out-perform it. I would urge you to act to strengthen this Final Judgement so that it will actually make a difference, and not only help level the playing field for the competitors Microsoft has wronged, but to help force Microsoft to improve itself and to preserve the foundations that our country's businesses were founded on.

A handwritten signature in black ink, reading "Robert A. Babcock". The signature is written in a cursive, flowing style with a large, prominent 'R' at the beginning.

Robert A. Babcock